

84-231

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ALEXANDER L. STEVAS,
CLERK

CASE NUMBER _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1983

ALVIN D. HOOPER AND MARY N. HOOPER,
APPELLANTS

VS.

BERNALILLO COUNTY ASSESSOR,
APPELLEE

ON APPEAL FROM THE SUPREME COURT
OF THE STATE OF NEW MEXICO

JURISDICTIONAL STATEMENT

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QUESTIONS PRESENTED BY THIS APPEAL

1. Whether a statutory scheme by which a State grants a continuing tax exemption to veterans who became residents of the State before a specified, fixed date but permanently denies such an exemption to otherwise qualified veterans who became residents after that date violates the constitutional rights of the newer resident-veterans with respect to equal protection, due process and the right to travel or migrate interstate?

2. Whether a State may, in the context of a tax-related statute, impose a residency requirement which permanently divides citizens of that State into two classes, one of which is perpetually denied a tax benefit which is granted to the other on a continuing basis?

3. Whether a State may, in conferring a continuing benefit on military veterans, impose, in addition to a bona fide residency requirement, another residency requirement unrelated to residency during the period of military service?

4. Whether there is a violation of State citizenship, secured by Section 1 of the 14th Amendment, when a fixed-date residency requirement is used, not as a test of the legitimacy of a claim of citizenship, but rather as a device to perpetually deny equal treatment to newer residents?

5. Whether, if found invalid, the residency requirement of paragraph C(3)(d) of N.M. Stat. Ann. § 7-37-5 (1978) (as amended) can be severed from the remainder of that statute?

PARTIES TO PROCEEDINGS BELOW

Alvin D. Hooper and Mary N. Hooper were the plaintiffs-appellants-petitioners and the Bernalillo County Assessor was the defendant-appellee-respondent in all proceedings below in the administrative agency and the Courts of New Mexico.

The Taxation and Revenue Department of the State of New Mexico, the American Legion and the Veterans of Foreign Wars were amicus curiae in the proceedings below in the Courts of New Mexico.

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N.M. ____, 678 P.2d 705 (1984).

GROUND FOR INVOKING
JURISDICTION OF THIS COURT

This is an appeal from the Supreme Court of New Mexico which rejected appellants' challenge to a State statute which requires residency in New Mexico prior to May 8, 1976 in order to qualify for a veteran's tax exemption.

Appellants challenged that statute as repugnant to their equal protection and due process rights secured by Section 1 of the 14th Amendment of the United States Constitution and their constitutionally protected right to travel or migrate interstate.

Appellants' challenge to the statute was initially rejected by the Court of Appeals of New Mexico in a decision and order entered March 22, 1984 (App. B). In its decision and order of April 10, 1984 (App. A), the Supreme Court of New

Mexico let stand, and effectively adopted, the decision of the Court of Appeals of New Mexico by its denial of appellants' petition for writ of certiorari to review that decision. Appellants' motion for rehearing of that petition (App. D) was filed with the Supreme Court of New Mexico on April 23, 1984. That motion was not acted upon and was therefore deemed denied by the Supreme Court of New Mexico on May 23, 1984. N.M.Sup.Ct.R.19, R.App.Proc. for Civ. Cases & R.Gov.Orig.Proc. in Sup.Ct., Jud.Pamp.7, Repl.Pamp.1984.

Appellants' notice of appeal to this Court was filed on July 12, 1984 in the Supreme Court of New Mexico and on July 13, 1984 in the Court of Appeals of New Mexico and copies thereof were served upon all parties to the proceedings below (App. E).

This Court has jurisdiction under 28
U.S.C. §1257(2) to hear this appeal.

CONSTITUTIONAL PROVISIONS
AND STATUTES INVOLVED

A veteran's tax exemption is authorized by Article VIII, Section 5 of the New Mexico Constitution and is implemented through N.M. Stat. Ann. § 7-37-5 (1978) (as amended).

Appellants believe the implementing statute, particularly paragraph C(3)(d) thereof, offends Section 1 of the 14th Amendment to the United States Constitution and the right to travel or migrate interstate which is guaranteed by that Constitution.

These constitutional provisions and statute are set forth below.

(i) SECTION 1 OF FOURTEENTH
AMENDMENT TO THE CONSTITUTION
OF THE UNITED STATES

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of

the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. U.S. Const. amend. XIV, §1.

(ii) ARTICLE VIII, SECTION 5 OF
THE CONSTITUTION OF THE
STATE OF NEW MEXICO

The legislature may exempt from taxation property of each head of the family to the amount of two hundred dollars (\$200) and the property, including the community or joint property of husband and wife, of every honorably discharged member of the armed

forces of the United States who served in such armed forces during any period in which they were or are engaged in armed conflict under orders of the president of the United States, and the widow or widower of every such honorably discharged member of the armed forces of the United States, in the sum of two thousand dollars (\$2,000). Provided, that in every case where exemption is claimed on the ground of the claimant's having served with the armed forces of the United States as aforesaid, the burden of proving actual and bona fide ownership of such property upon which exemption is claimed, shall be upon the claimant. N.M. Const. art. VIII, §5 (as amended Nov. 3, 1914, Sept. 20, 1921, Sept. 20, 1949, Sept. 15, 1953, and Nov. 6, 1973).

(111) NEW MEXICO STATUTES,
SECTION 7-37-5

A. Two thousand dollars (\$2,000) of the taxable value of property, including the community or joint property of husband and wife, subject to the tax is exempt from the imposition of the tax if the property is owned by a veteran or the veteran's unmarried surviving spouse if the veteran or surviving spouse is a New Mexico resident. The exemption shall be deducted from taxable value of property to determine net taxable value of property.

B. The veteran exemption shall be applied only if claimed and allowed in accordance with Section 7-38-17 NMSA 1978 and regulations of the division.

C. As used in this section, "veteran" means an individual who:

(1) has been honorably discharged from membership in the armed

forces of the United States;

(2) served in the armed forces of the United States on active duty continuously for ninety days, any part of which occurred during a period in which the armed forces were engaged in armed conflict under orders of the president; and

(3) was a New Mexico resident prior to:

(a) January 1, 1934, if the period of armed conflict during which the person served was during World War I or any conflict prior to that time;

(b) January 1, 1947, if the period of armed conflict during which the person served was World War II or any other conflict prior to that time but subsequent to the ending of hostilities of World War I;

(c) February 1, 1955, if the

period of armed conflict during which the person served was the Korean conflict; or

(d) May 8, 1976, if the period of armed conflict during which the person served was the Vietnam conflict.

D. For the purposes of Subsection C of this section, a person is considered a New Mexico resident prior to January 1, 1947 if, prior to that date, he lived in an area within the external boundaries of New Mexico that was then under the exclusive jurisdiction of the United States but became and continued to be a resident of New Mexico after cession of jurisdiction back to the state.

E. For the purposes of Subsection C of this section, a person who would otherwise be entitled to status as a

veteran except for failure to have served in the armed forces continuously for ninety days is considered to have met that qualification if he served during the applicable period for less than ninety days and the reason for not having served for ninety days was a discharge brought about by service-connected disablement.

F. For the purposes of Paragraph (1) of Subsection C of this section, a person has been "honorably discharged" unless he received either a dishonorable discharge or a discharge for misconduct. N.M. Stat. Ann. § 7-37-5 (1978) (as amended).

STATEMENT OF THE CASE

The material facts of this case are simple and undisputed. They are stated in the first two paragraphs of the opinion of the Court of Appeals of New Mexico (App. B 2-3).

Appellants jointly own real property subject to taxation in Bernalillo County, New Mexico. Appellant, Alvin D. Hooper, served in the armed forces during the specified time period, for a sufficient length of time, and received an honorable discharge as required by N.M. Stat. Ann. § 7-37-5 (1978) (as amended) in order to qualify for a veteran's tax exemption as a Vietnam era veteran. Appellants became bona fide residents of New Mexico on August 17, 1981. Appellants applied to the Bernalillo County Assessor ("Assessor") for a veteran's exemption with respect

to their 1983 property taxes. This application was denied by the Assessor solely because appellants had not established residency in New Mexico prior to May 8, 1976, as required by paragraph C(3)(d) of N.M. Stat. Ann. § 7-37-5 (1978) (as amended).

The Assessor's denial was protested and appealed by appellants to the Bernalillo County Valuation Protests Board ("Board") which upheld the Assessor's denial following a hearing (App. C).

Appellants appealed the Assessor's and Board's denials to the Court of Appeals of the State of New Mexico. That Court affirmed the Assessor's and Board's denials and held that the residency requirement of paragraph C(3)(d) of the statute was valid and did not violate appellants' equal protection

or due process rights or their right to travel or migrate interstate (App. B).

The Supreme Court of New Mexico denied appellants' timely-filed petition for a writ of certiorari to review the decision of the Court of Appeals of New Mexico and denied their timely-filed motion for rehearing of that petition, thereby effectively adopting the decision and order of the Court of Appeals of New Mexico.

Questions 1-4 regarding the validity of the challenged statute were first raised in appellants' February 4, 1983 letter to the Assessor protesting his denial of their claim for a veteran's tax exemption and petitioning for a hearing of that denial before the Board. The questions were again raised in oral argument before the Board in its

hearing of the petition. The decision and order of the Board did not explicitly address the questions, but its denial of the petition required an implicit decision that the statute did not violate appellants' equal protection or due process rights or right to travel.

These questions were again raised in the proceedings before the Court of Appeals of the State of New Mexico. The questions were raised in the briefs filed with that Court and in the oral argument before that Court and were recognized by that Court as the issues before it (App. B 3-4). The Court of Appeals of the State of New Mexico specifically held that the residency requirement of N.M. Stat. Ann.

§ 7-37-5C(3)(d) (1978) (as amended) was valid and did not violate the equal protection rights (App. B 4-19) or the

due process rights (App. B 19-22) of appellants guaranteed by the 14th Amendment of the United States Constitution and did not unconstitutionally burden their right to travel or migrate (App. B 6).

These questions were further raised in appellants' petition for writ of certiorari filed in the Supreme Court of New Mexico. That Court's denial of that petition and the motion for rehearing effectively adopted the decision and order of the Court of Appeals of the State of New Mexico regarding the questions.

Question 5 regarding severance of the challenged part of the statute was first raised in the oral argument before the Board. It was subsequently raised in the briefs and oral argument before the Court of Appeals of the State of New

Mexico. Neither the Board nor that Court addressed this question in view of their decisions upholding the validity of the statute.

IMPORTANCE OF QUESTIONS PRESENTED

The questions presented by this appeal are substantial. The actions of the Legislature and the Courts of New Mexico in implementing and upholding the residency requirement of N.M. Stat. Ann. § 7-37-5C(3)(d) (1978) (as amended) do violence to the thrust of this Court's decisions regarding residency requirements which can be imposed by a State as a condition for receipt of benefits provided to its citizens. The thrust of these decisions is that State citizenship, and the rights that flow therefrom as guaranteed by the United States Constitution, equates only with simple residence in the absence of compelling State interests and there are no degrees of citizenship in this regard. Yet the Legislature and the Courts of New Mexico have created and

are trying to maintain two permanent classes of resident-veterans in New Mexico which enjoy substantially different citizenship rights or benefits based solely on the date of establishing residence. The statute involved here contains a bona fide residency requirement in paragraph A thereof. The additional fixed-date residency requirement of paragraph C(3)(d) which is challenged herein is simply another manifestation of the provincial thinking that older or earlier residents are somehow more worthy than newer residents. This is the very evil that the equal protection right was intended to proscribe.

This Court has previously rejected lengthy durational residency requirements as inconsistent with the constitutional right to free interstate

migration and the right to equal protection. Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974); Dunn v. Blumstein, 405 U.S. 330 (1972); Shapiro v. Thompson, 394 U.S. 618 (1969). This Court has also rejected residency requirements which based the amount of a benefit on the length of residency. Zobel v. Williams, 457 U.S. 55 (1982). Further, this Court has found that the imposition of illogical and unreasonable conditions such as irrebuttable presumptions with respect to residency violates due process rights guaranteed by the 14th Amendment. Vlandis v. Kline, 412 U.S. 441 (1973).

This Court has not previously examined a fixed-date residency requirement such as the one here in issue which creates a perpetual disparity between two classes of

citizens of a State solely on the basis of the date of residency. Nevertheless, this fixed-date residency requirement raises the same concerns with regard to equal protection, due process and the right to travel or migrate that were raised by the other types of residency requirements which this Court has invalidated. It is noteworthy that contemporaneously with the action of the Courts of New Mexico in denying appellants' challenge to the fixed-date residency requirement, the Supreme Court of Alaska was unanimously invalidating a statute containing such a requirement. Schafer v. Vest, 680 P.2d 1169 (Alas. 1984).

The Court of Appeals of the State of New Mexico relied heavily on the fact that the residency requirement in

question specifies a fixed-date rather than a duration or length (App. B 9, 17-18). Once it was determined that this residency requirement did not fit the exact mold of those residency requirements previously struck down by this Court, the Courts of New Mexico showed little concern for the actual effects of the residency requirement. Such reasoning relies on form to the exclusion of substance.

The fixed-date residency requirement here in issue is even more onerous than those residency requirements already invalidated by this Court in that, unlike a durational residency requirement, it forever denies equal access to a continuing State benefit. Unlike the residency requirement invalidated in Zobel v. Williams, 457 U.S. 55 (1982),

it denies the entire benefit regardless of length of residency. It is also more insidious in that it allows the Legislature to arbitrarily pick and choose on a long-term basis those residents who will receive the benefit. This arbitrariness is clearly illustrated by the action of the New Mexico Legislature in 1983 when the fixed date specified in the statute was changed from May 8, 1975 to May 8, 1976.

If this residency requirement is allowed to stand, nothing would prevent a State from easily circumventing this Court's prohibition against lengthy durational residency requirements by utilizing a fixed-date residency requirement and periodically modifying the specified fixed date, as was done on at least one occasion. If this fixed-date residency requirement is

allowed to stand, nothing would prevent a State from reserving the best schools, libraries and parks, the best civil service jobs, etc., to those who became residents before the specified date. This Court has clearly ruled that a similar result based upon length of residency would be impermissible. Zobel v. Williams, supra, 457 U.S., at 64. It is equally impermissible when based upon the date of residency.

The Court below stated several reasons to support the validity of the residency requirement. These reasons are challenged in the questions presented for review. One such reason was that the denial of a veteran's tax exemption is not of sufficient significance to create any recognizable burden on the constitutional rights of those

denied the benefit (App. B 6-8). The veteran's tax exemption is not a one-shot benefit. It can continue perpetually for the class of residents who qualify under the fixed-date residency requirement and thus can provide annual tax exemptions which may amount to tens of thousands of dollars over a lifetime for a member of that class. On the other hand, this benefit is perpetually denied to members of the second class who are disqualified by the fixed-date residency requirement. This veteran's tax exemption clearly appears as significant as the dividend distribution or even the welfare and medical benefits with which this Court was concerned in the cases it has examined with respect to other forms of residency requirements. Furthermore, the veteran's tax exemption is of sufficient

importance to be specifically addressed in the State Constitution.

Another reason advanced in support of the residency requirement was that a legislature has substantial freedom in the context of tax legislation to implement classifications (App. B 18-19). However, none of the cited authority addresses, and this Court has never addressed, the extent of such freedom when a classification for tax purposes is based solely upon a date of residency. Regan v. Taxation With Representation of Washington, Nos. 81-2338, 82-134, slip op.; 103 S.Ct. 1997 (1983), does not involve classifications based on a residency requirement and thus was erroneously relied on by the Court below. Classifying property or income or organizations for tax purposes is vastly

different from classifying bona fide State citizens based solely on their date of residency.

Still another reason advanced in support of the residency requirement was that a "...state's interest in expressing gratitude and rewarding its own citizens for honorable military service..." provides a rational basis for the fixed-date residency requirement (App. B 15). The residency requirement herein does not require residency during the period of military service and thus the foregoing reasoning is nothing more than the prohibited rationale that the older or earlier residents should get more. This Court has not previously examined the extent to which a State may go in parceling out veterans' benefits based on residency requirements, particularly when those requirements do

not relate to the actual period of military service.

This Court should not be deterred from accepting this appeal, and resolving the questions presented, by the failure of the Supreme Court of New Mexico to address the questions on their merits in its denial of appellants' petition for writ of certiorari. That petition clearly set forth more than adequate grounds for granting such writ, including the importance of the questions. As stated by the Court of Appeals of New Mexico in its Order Re Filing of Amicus Briefs dated January 19, 1984 (App. F), the questions presented are "...of general importance to the citizens of this State and to military veterans specifically...". As indicated above, the Supreme Court of Alaska also recently considered

questions raised by a fixed-date residency requirement to be of substantial importance when it examined and invalidated such a requirement. Schafer v. Vest, 680 P.2d 1169 (Alas. 1984).

Although the facts of this case specifically involve only paragraph C(3)(d) of N.M. Stat. Ann. § 7-37-5 (1978) (as amended) relating to Vietnam era veterans, the decision of the questions presented herein will have a direct impact on the validity of paragraphs C(3)(a)-(c) of that statute which contain substantially similar residency requirements regarding World War I, World War II and Korean conflict veterans. Accordingly, every veteran now living in, or subsequently migrating to, New Mexico is directly affected by the resolution of these questions, as

each such veteran is either granted or denied a tax exemption based on this statute.

CONCLUSION

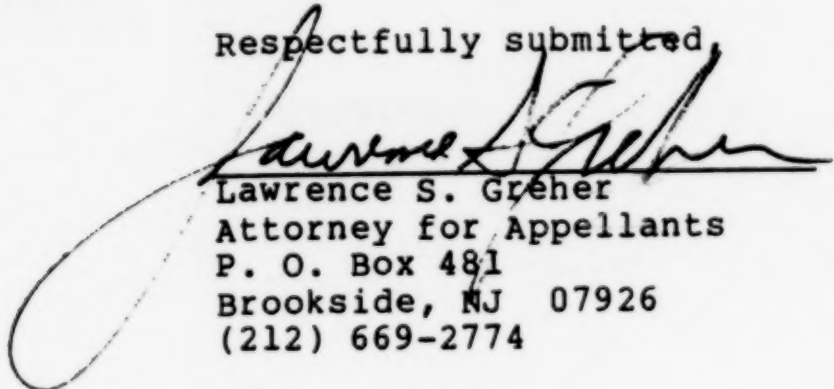
This case presents substantial constitutional questions regarding equality of State citizenship, due process and the right to travel. State citizenship and the rights associated therewith are guaranteed under the United States Constitution. Residency requirements which burden those rights and perpetually deny equal status to acknowledged bona fide residents are invalid unless they can withstand strict scrutiny.

This case is novel in the type of residency requirement presented. However, the unconstitutionality of that requirement is clear when the appropriate standard is applied. To allow the decisions of the Courts of New Mexico to stand would deal a serious blow to the fundamental concepts of

equal citizenship, due process and free interstate travel.

Accordingly, this Court is respectfully requested to accept this appeal and resolve the questions presented.

Respectfully submitted,



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APPENDICES

APPENDIX A

IN THE SUPREME COURT OF THE STATE OF NEW
MEXICO

Tuesday, April 10, 1984

NO. 15,378

ALVIN D. and MARY N. HOOPER,

Petitioners,

vs.

BERNALILLO COUNTY ASSESSOR,

Respondent.

PROCEEDING ON CERTIORARI

This matter coming on for
consideration by the Court upon petition
for writ of certiorari, and the Court
having considered said petition and
being sufficiently advised;

NOW, THEREFORE, IT IS ORDERED that
petition for writ of certiorari is
hereby denied.

IT IS FURTHER ORDERED that the
Record in Cause No. 7307 is hereby

returned to the Clerk of the Court of
Appeals.

ATTEST: A TRUE COPY

/s/ Rose Marie Alderete
Clerk of the Supreme Court
of the State of New Mexico

APPENDIX B

Filed and entered March 22, 1984

IN THE COURT OF APPEALS OF THE STATE OF
NEW MEXICO

ALVIN D. and MARY N. HOOPER,

Appellants,

vs.

BERNALILLO COUNTY ASSESSOR,

Appellee.

No. 7307

APPEAL FROM DECISION AND ORDER OF
BERNALILLO COUNTY VALUATION PROTESTS
BOARD

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OPINION

MINZNER, Judge

The Bernalillo County Assessor ("Assessor") denied Appellants Alvin D. and Mary N. Hooper ("collectively referred to as Hooper") claim for a veteran's exemption under NMSA 1978, Section 7-37-5(C)(3)(d) (Repl.Pamp. 1983). The statute exempts \$2,000.00 of the taxable value of property for any honorably discharged Vietnam veteran who served on active duty for at least ninety days and who was a New Mexico resident prior to May 8, 1976. Following a hearing, the Bernalillo County Valuation Protests Board ("Board") upheld the Assessor's denial. Hooper appeals pursuant to NMSA 1978, Section 7-38-28(A) (Repl.Pamp.1983).

The facts are undisputed. Hooper owns real property subject to taxation

in Bernalillo County. Alvin D. Hooper served in the armed forces on active duty in Vietnam for a sufficient length of time under Section 7-37-5(C)(2). He received an honorable discharge. The claim for an exemption was denied solely because he did not establish residency in New Mexico until August 17, 1981.

Hooper raises three issues on appeal:

(1) Whether the statutorily enacted residency requirement for qualification for the veterans exemption violates the equal protection clauses of both the United States and New Mexico Constitutions;

(2) Whether the statutorily enacted residency requirement for qualification for the veterans exemption violates the due process clauses of both the United States

and New Mexico Constitutions; and

(3) Whether, if invalid, the residency requirement can be severed from the exemption statute.

We affirm the Assessor's and Board's denial of the exemption and hold that the residency requirement is valid. Thus, we do not reach the third issue.

EQUAL PROTECTION

Section 7-37-5(C)(3)(d) separates all Vietnam veteran New Mexico residents into two classes: a class of veterans who became residents prior to May 8, 1976, and are entitled to the exemption; and a class of veterans who became residents subsequent to May 7, 1976, and are not entitled to the exemption. Alvin D. Hooper is a member of the latter class, to which the statute denies a benefit.

When a statute is challenged on

equal protection grounds, we must determine the appropriate standard of review. Our courts have interpreted the equal protection clause of the New Mexico Constitution consistently with federal court interpretations of the equal protection clause in the United States Constitution. Anaconda Co. v. Property Tax Department, 94 N.M. 202, 608 P.2d 514 (Ct.App.1979), cert. denied, 94 N.M. 628, 614 P.2d 545 (1980). A classification scheme which impinges on a fundamental right or discriminates against a suspect class is constitutionally defensible only if it furthers a compelling state interest. McGeehan v. Bunch, 88 N.M. 308, 540 P.2d 238 (1975).

Hooper urges this court to find the statute unconstitutional on the ground that it penalizes Vietnam era veterans

who have exercised their fundamental right to travel and is not supported by a compelling state interest. Because in our judgment the statute does not unconstitutionally burden the right to travel, we decline to apply such a standard.

All residency requirements to some degree burden those who exercise the right to travel. Decisions recognizing the importance of that right, such as Shapiro v. Thompson, 394 U.S. 618 (1969), were never intended to cast doubt on the validity of all residency requirements. Dunn v. Blumstein, 405 U.S. 330, 342, n. 13 (1972). Furthermore, not every statute which has an adverse impact on a person who has exercised the right to travel is subject to strict scrutiny:

The amount of impact
required to give rise to

the compelling-state-interest test was not made clear [in Shapiro]. The Court spoke of the requisite impact in two ways. First, we considered whether the waiting period would deter migration.... Second, the Court considered the extent to which the residence requirement served to penalize the exercise of the right to travel.

Memorial Hospital v. Maricopa County,
415 U.S. 250, 256-57 (1974) (emphasis in
original).

Section 7-37-5(C)(3)(d) does not
unconstitutionally penalize an exercise
of the right to travel. Courts that
have applied the stricter standard of
review to statutes because they abridged
the right to travel have done so with
respect to such fundamental interests as
voting, welfare benefits, or public
medical assistance. Cf. Hawaii Boating
Association v. Water Transportation
Facilities, 651 F.2d 661 (9th Cir.1981)

(court found durational residency requirements for preferential recreational rates did not impose a significant penalty on fundamental right to travel). Such rights are aspects of state citizenship now recognized in every state in some form. Denying such rights to new citizens even temporarily would penalize new residents and deter migration because those persons who contemplate moving interstate have reasonable expectations that such necessary, essential rights will be available. A veteran's property tax exemption is not such a right.

Hooper has argued that the value of the right is irrelevant. Hooper cites Zobel v. Williams, 457 U.S. 55 (1982), which found that the Alaska dividend program denied new residents equal protection, for the proposition that

denial of a benefit that has relatively small pecuniary value may be a sufficient penalty on the right to travel. Zobel did not decide whether the program merited strict scrutiny and thus did not alter the test established by Memorial Hospital.

Courts have held unconstitutional a substantial waiting period imposed on new residents as a qualification for benefits. Cf. Lambert v. Wentworth, 423 A.2d 527 (Me.1980) (court struck a ten-year residency requirement as an unconstitutional penalty on those veterans who have recently exercised their right to travel). That is not the case before us. Section 7-37-5(C)(3)(d) grants a tax exemption for veterans on the basis of residency established prior to a certain date. Such a legislative decision does not deny equal protection

unless it lacks a rational basis. Id.

A legislative classification must be reasonable, not arbitrary, and must rest upon some ground of difference that has a fair and substantial relation to the object of the legislation. McGeehan v. Bunch. The legislature enjoys a wide field of choice in creating classifications. Shope v. Don Coe Construction Co., 92 N.M. 508, 590 P.2d 656 (Ct.App.1979). In taxation, even more than in other fields, the legislature possesses the greatest freedom in classification. Michael J. Maloof & Co. v. Bureau of Revenue, 80 N.M. 485, 458 P.2d 89 (1969). "That a statute may discriminate in favor of a certain class does not render it arbitrary if the discrimination is founded upon a reasonable distinction, or difference in state policy." Allied

Stores of Ohio v. Bowers, 358 U.S. 522, 528 (1959).

When evaluated in light of this standard, we find that the New Mexico veterans exemption reflects legitimate state purposes and that Section 7-37-5(C)(3)(d) bears a reasonable relationship to those purposes. The people of the state first adopted the veterans exemption as Article 8, Section 5 of the New Mexico Constitution, in September 1921. The constitutional provision is not self-executing. It requires implementing legislation by the legislature in order to become effective. Cf. State ex rel. Delgado v. Romero, 17 N.M. 81, 124 P. 649 (1912).

The legislature first enacted a veterans exemption statute in 1923. That enactment contained both a residency and a thirty-day service

requirement, neither of which is contained in the constitutional provision. Chapter 130, Laws of 1923, codified in NMSA 1941, § 76-111. The legislature amended the statute in 1933 to provide that the claimant's residency must be acquired prior to January 1, 1934. Flaska v. State, 51 N.M. 13, 177 P.2d 174 (1946).

In Flaska, the court addressed the intent of the exemption. The court found that the people had adopted a plan to reward New Mexico veterans which could be made to apply to soldiers of any war, past or future, and had given the legislature continuing and permanent discretion to modify qualification criteria. Although the court recognized that the legislature might grant a tax exemption to every honorably discharged veteran of any war, the court implicitly

recognized the propriety of a less expansive exemption under the state constitution. The court deferred to the legislature for a solution to the problem that the requirement of residency prior to 1934 might exclude some World War II veterans:

Perhaps some soldiers who live in and entered military service from New Mexico and served during the present war will be denied benefit of the exemption because of the requirement that residence in the state must have been acquired before 1934 to be eligible for the bounty.... If it sees fit to do so, the legislature has authority to act again...to meet and provide for conditions which may have grown up since the exemption statute in question was passed.

51 N.M. at 26, 177 P.2d at 182. In Flaska, the court assumed that the 1934 residency requirement was valid; the appellant satisfied the requirement.

The legislature has since amended the statute to provide specific residency date requirements for veterans of each major conflict in which the United States has been engaged since the exemption was originally adopted. In each instance, cutoff dates allow a veteran to qualify for the exemption if he establishes residency in New Mexico within a grace period following the official end of the conflict. NMSA 1978, § 7-37-5 (Cum.Supp.1983).

The question before us is whether the legislature acted arbitrarily or capriciously in either establishing a cutoff date or in adopting this specific cutoff date for veterans of the Vietnam war. Our courts have recognized the legislative classification based wholly upon the time element is invalid where the time selected has no reasonable

relation to the object of the legislation. State v. Sunset Ditch Co., 48 N.M. 17, 145 P.2d 219 (1944). That is not the case here.

The legislature has acted reasonably in exercising its discretion under the state constitution. A state's interest in expressing gratitude and rewarding its own citizens for honorable military service is a rational basis for veterans' preferences. Langston v. Levitt, 425 F.Supp. 642 (S.D.N.Y.1977); August v. Bronstein, 369 F.Supp. 190 (S.D.N.Y.1974), aff'd, 417 U.S. 901 (1974). The residency requirement at issue extends the benefit to any Vietnam veteran who was a resident prior to induction, who became a resident after induction but before his active tour of duty, or who became a resident within one year of the final U.S. troop

withdrawal. The scheme affords any Vietnam veteran a reasonable opportunity to establish New Mexico residency and qualify, and the one-year period, of which Hooper is critical, is actually a grace period that the legislature gratuitously provided. Cf., Lambert v. Wentworth (sustaining a requirement of residency at the time of induction).

That the legislature chooses to reward a specific class of veterans does not require it to extend the benefit to all veterans where the distinguishing residency criteria is rational. See Horst v. Guy, 211 N.W.2d 723 (N.D.1973); Miller v. Board of County Commissioners of Natrona County, 337 P.2d 262 (Wyo.1959). The legislature is entitled to reward and encourage veterans to settle in New Mexico, but it is also entitled to limit the period of time

within which they may choose to establish residency. See Miller. The fact that the legislature might have furthered its purpose more completely or more equitably does not invalidate the classification. East Texas Guidance & Achievement Center, Inc. v. Brockette, 431 F.Supp. 231 (E.D.Tex.1977).

Hooper argues that the specific date chosen, May 8, 1976, is completely arbitrary, pointing to the fact that the 1983 legislature changed the cutoff date from May 8, 1975 to May 8, 1976. Although any date chosen would be, to some extent, arbitrary, the legislature has enacted a statute which allows Vietnam veterans additional time to establish or re-establish New Mexico residency. The legislature has provided a comparable period for veterans of World War II and of the Korean

conflict. Classification based upon the particular cutoff date is reasonably related to the object of the legislation.

Zobel v. Williams, upon which Hooper relies, is distinguishable. There, the court struck down a classification scheme which extended a governmental benefit to all bona fide residents but conditioned the amount of the benefit on duration of residence. Finding that the classification scheme "creates fixed, permanent distinctions between an ever-increasing number of perpetual classes of concededly bona fide residents, based on how long they have been in the State" (457 U.S. at 59), the court rejected Alaska's interests in support of such a scheme as insufficient.

The statute at issue here extends a tax benefit not to all bona fide residents, but to a small class of New

Mexico veteran residents. Unlike Zobel, the statute at issue here involves tax legislation and requires us to recognize an even broader legislative freedom in classification. Regan v. Taxation With Representation of Washington, ___ U.S. ___, 103 S.Ct. 1997, ___ L.Ed.2d ___ (1983). This classification scheme does not favor long-term residents as a class over those who have recently exercised their right to travel. It is not a true durational residency requirement which courts have disfavored. Zobel v. Williams; Lambert v. Wentworth. The legislature here extended a benefit to a specific class of New Mexico veteran residents in a manner that is rationally related to legitimate state interests.

DUE PROCESS

Hooper next contends that the

statute denies a constitutional right to due process because it is so vague or uncertain that persons of common intelligence must necessarily guess at its meaning. Hooper points out that the statute is unclear as to whether the requirement at issue is a continuous residency requirement and that a veteran with only one day of New Mexico residency, immediately followed by an extended period of nonresidency prior to May 8, 1976, might qualify for the exemption where Alvin D. Hooper does not.

Such arguments are not, standing alone, sufficient to allow this court to consider the issues raised. The exemption was not denied on either ground raised in support of this position. Hooper does not have standing to challenge the statute on the due process grounds of vagueness raised, and

we decline to issue an advisory opinion on the matter. Advance Loan Co. v. Kovach, 79 N.M. 509, 445 P.2d 386 (1968); Asplund v. Alarid, 29 N.M. 129, 219 P. 786 (1923).

Hooper also argues that the statute fails to satisfy due process requirements because there is no rational basis to deny the tax exemption here because other veterans with fewer or less significant contacts with New Mexico could qualify. The fact that the legislature chooses to address an issue in such a manner that absolute equality is not realized does not require this court to strike the classification on due process grounds. Albuquerque Metropolitan Arroyo Flood Control Authority v. Swinburne, 74 N.M. 487, 394 P.2d 998 (1964).

Because we find that the statutory

classification is constitutional, we
need not consider the issue of severance
raised by Hooper. The decisions of the
Assessor and the Board are affirmed.

IT IS SO ORDERED.

/s/ Pamela B. Minzner
PAMELA B. MINZNER, JUDGE

WE CONCUR:

/s/ Thomas A. Donnelly
THOMAS A. DONNELLY, CHIEF JUDGE

/s/ C. Fincher Neal
C. FINCHER NEAL, JUDGE

APPENDIX C

Entered June 14, 1983

BEFORE THE BERNALILLO COUNTY VALUATION
PROTESTS BOARD

IN THE MATTER OF THE PROTEST
OF ALVIN D. AND MARY N. HOOPER.

PROTEST NO. 83-185

DECISION AND ORDER

This matter came on for hearing before the Bernalillo County Valuation Protests Board (hereinafter called the "Board") on May 17, 1983. All applicable statutes; Property Tax Division regulations; arguments; and, all the evidence presented at the hearing were fully considered by the Board, and the Board being fully informed in the premises, finds as follows:

1. The Board has jurisdiction of the subject matter and parties.
2. The property owner was fully

informed as to all statutes and Property Tax Division regulations governing procedures before the Board and was further informed as to the method of valuation used by the Bernalillo County Assessor in determining the value of the subject property.

3. The valuation of the property is not protested herein. The property owner protests the denial of a veteran's exemption of \$2,000.00 on the grounds that § 7-37-5 N.M.S.A. 1978 (as amended) is unconstitutional.

4. The Taxpayer admitted, by his own testimony, that he did not become a resident of New Mexico until 1981.

5. Conclusion. The Board finds that the property owner is claiming a veteran's exemption on the basis of service during the Viet Nam conflict, and concludes that the statute, § 7-37-5

(c)(1)[sic](d) N.M.S.A. 1978 (as amended), is conclusive as to a requirement of residence in New Mexico prior to May 8, 1976 for Viet Nam conflict veterans.

6. The Board concludes that the valuation as determined by the County Assessor is in accordance with the law, is supported by substantial evidence in the record taken as a whole and is not arbitrary, capricious or an abuse of discretion.

Additional reasons for the Decision and Order of the Board, if any are:
None.

The Board therefore orders that no change be made in the 1983 valuation records of the Bernalillo County Assessor with respect to the following described property:

T10NR04E Section 35 LT17 BL44
Four Hills Village Eleventh

Installment; New Code Number
1-023-055-382-110-41108

The Board directs the County Assesor
to take appropriate action to carry out
this Order.

DONE THIS 14th day of June, 1983.

/s/ Michael T. Pino
MICHAEL T. PINO, CHAIRMAN
Bernalillo County Vauation
Protests Board

I, Michael T. Pino, Chairman of the
Board, certify that I sent, by certified
mail, a copy of this Order to the above
named property owner, or his
representative, at the following
address, Alvin D. and Mary N. Hooper
1712 Pedregoso Place SE, Albuquerque,
New Mexico 87123, the County Assessor
and the Director of this Division on
this 14th day of June, 1983.

/s/ Michael T. Pino
MICHAEL T. PINO, CHAIRMAN

APPENDIX D

Filed April 23, 1984. Never acted upon by Court, therefore deemed denied as of May 23, 1984, pursuant to N.M.Sup.Ct.R. 19, R.App.Proc. for Civ. Cases & R.Gov. Orig.Proc. In Sup.Ct., Jud.Pamp.7, Repl.Pamp.1984.

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

ALVIN D. and MARY N. HOOPER,

Petitioner,

vs.

BERNALILLO COUNTY ASSESSOR,

Appellee.

No. 15378

MOTION FOR REHEARING OF PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS IN DOCKET NO. 7307

COMES NOW Petitioner, by and through its attorney, and moves this Court for a rehearing of Petitioner's Petition for Writ of Certiorari, originally applied for by Petitioner, pro se, and as grounds therefor, states the following:

1. This Court has overlooked and misapprehended the compelling importance and interest of this case to the public and particularly to the resident military veterans in the state.

2. This Court has overlooked and misapprehended the direct conflict of the decision of the Court of Appeals with decisions of this Court and the United States Supreme Court.

3. This Court has overlooked and misapprehended the direct challenge which Petitioner has raised to the validity of the statute governing veterans' exemptions under both the United States and New Mexico Constitutions.

WHEREFORE, Petitioner prays this Court for a rehearing of his Petition for a writ of certiorari to the Court of

Appeals and a granting of that Petition.

Respectfully submitted,

/s/ Lawrence S. Greher
LAWRENCE. S. GREHER
1193 Bobcat Blvd., NE
Albuquerque, NM 87122
Attorney for Petitioner
(505)844-4165

APPENDIX E

Filed July 12, 1984, in Supreme Court of New Mexico. Filed July 13, 1984, in Court of Appeals of State of New Mexico.

IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

ALVIN D. HOOPER and MARY N. HOOPER,

Appellants,

vs.

BERNALILLO COUNTY ASSESSOR,

Appellee.

No. 15378

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

1. Appellants, Alvin D. Hooper and Mary N. Hooper, by and through their attorney, hereby given notice of appeal of this case to the Supreme Court of the United States.

2. The Supreme Court of the State of New Mexico let stand, and effectively adopted, the decision and order of the Court of Appeals of the State of New

Mexico in Docket No. 7307, filed and entered March 22, 1984, by its denial of Appellants' Petition for Writ of Certiorari, entered April 10, 1984. Appellants' Motion for Rehearing of Petition for Writ of Certiorari, which was filed in this Court on April 23, 1984, was never acted on by this Court and was therefore deemed denied as of May 23, 1984 pursuant to Rule 19, New Mexico Supreme Court Rules of Appellate Procedure for Civil Cases and Rules Governing Original Proceedings in the Supreme Court. Judicial Pamphlet 7, Replacement Pamphlet 1984.

Appellants appeal from that decision and order of the Supreme Court of New Mexico and that decision and order of the Court of Appeals of the State of New Mexico which upheld the validity of N.M. Stat. Ann. § 7-37-5C(3)(d) (1978) (as

amended) as not violative of their equal protection rights and due process rights guaranteed by the 14th Amendment to the United States Constitution and their right of free interstate migration guaranteed by that Constitution.

3. This appeal to the Supreme Court of the United States is taken under 28 U.S.C. §1257(2).

Respectfully submitted,

/s/ Lawrence S. Greher
LAWRENCE S. GREHER
1193 Bobcat Blvd., NE
Albuquerque, NM 87122
Attorney for Appellants
(505) 844-4165

CERTIFICATE OF SERVICE

I hereby certify that all parties required to be served the foregoing Notice of Appeal to the Supreme Court of the United States have been served. I further certify that I made such service by depositing a copy of the foregoing document in a United States post office in Albuquerque, New Mexico, with first-class postage prepaid, addressed to each of the following on this 10th day of July, 1984.

Paul Bardacke, Esq.
Attorney General, State of
New Mexico
P. O. Drawer 1508
Bataan Memorial Building
Santa Fe, NM 87503

Bridget A. Jacober, Esq.
Assistant Attorney General
Taxation & Revenue Department
P. O. Box 630
Santa Fe, NM 87509-0630

Kenneth A. Hunt, Esq.
Attorney for Bernalillo
County Assessor
P. O. Box 26387
Albuquerque, NM 87125

David Greer, Esq.
Attorney for Amicus Curiae
American Legion
and Veterans of Foreign Wars
110 Quincy, NE
Albuquerque, NM 87108

I further certify that I deposited a copy of this Notice of Appeal to the Supreme Court of the United States in a United States post office in Albuquerque, New Mexico, with first-class postage prepaid, addressed to the Clerk, Court of Appeals of New Mexico, P. O. Box 2008, Supreme Court Building, Santa Fe, New Mexico, 87504-2004 on this 10th day of July, 1984 for filing with that Court.

/s/ Lawrence S. Greher
LAWRENCE S. GREHER
Attorney for Appellants

APPENDIX F

Filed and entered January 19, 1984

IN THE COURT OF APPEALS OF THE STATE OF
NEW MEXICO

ALVIN D. and MARY N. HOOPER,

Property Owner-Appellant,

v.

BERNALILLO COUNTY ASSESSOR,

Appellee.

No. 7307

ORDER RE FILING OF AMICUS BRIEFS

It appearing that appellant herein has challenged the constitutionality of NMSA 1978, Section 7-37-5(C)(3)(d), allowing a veterans tax exemption, and it further appearing that this issue is of general importance to the citizens of this State and to military veterans specifically; the following organizations are hereby invited to file an amicus brief with this Court addressing the issues raised by

appellant in this cause:

New Mexico Association of Counties
P. O. Box 1748
Santa Fe, NM

New Mexico State Bar, Taxation
Section
P. O. Box 25883
Albuquerque, NM

Vietnam Veterans of New Mexico
833 Gibson, SE
Albuquerque, NM

Veterans of Foreign Wars
P. O. Box 8411
Albuquerque, NM

American Legion
1803 Carlisle, NE
Albuquerque, NM

American Civil Liberties Union
1330 San Pedro, NE
Albuquerque, NM

IT IS ORDERED that any of the above organizations may file an amicus brief with this Court, provided that they indicate by written notice filed with this court a desire to do so, on or before 31, January, 1984.

In the event any of the above entities desire to file amicus briefs

herein, they shall be filed with this Court on or before, the 20th day of February, 1984. Thereafter, Appellant and Appellee will be permitted to file responsive briefs ten (10) days thereafter on March 1, 1984.

Dated this 19th day of January, 1984.

/s/ Thomas A. Donnelly
THOMAS A. DONNELLY, CHIEF
JUDGE

/s/ C. Fincher Neal
C. FINCHER NEAL, JUDGE